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ANALYSIS OF THE VAN RECHT VERVOLGING ONSLAG CASE DECISION IN THEFT IN THE HOUSEHOLD

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ABSTRACT

Putusan Van Recht Vervolging Onslag merupakan putusan yang berpendapat bahwa perbuatan yang didakwakan kepada terdakwa terbukti, tetapi perbuatan itu tidak merupakan suatu tindakan pidana, maka terdakwa diputus lepas dari segala tuntutan hukum. Dalam putusan No.126PK/Pid/2012 merupakan putusan yang berkaitan dengan pencurian dalam rumah tangga. putusan ini menjadi menarik karena sangat merugikan korban sehingga perkara tersebut diajukan tahap peninjauan kembali. Metode pendekatan yang dipakai dalam penelitian ini menggunakan metode yuridis normatif, hasil penelitian menyebutkan bahwa berdasarkan duduk perkara diatas dilihat dari sisi hukum pidana adalah merupakan dugaan tindak pidana pencurian pemberatan dalam lingkungan keluarga, sehingga syarat harus terpenuhinya hubungan keluarga antara korban tindak pidana dengan pelaku tindak pidana itu sendiri harus dibuktikan terlebih dahulu. Bahwa perbuatan para terdakwa lebih terqualifikasi dalam ketentuan pasal 363 (1), 4e, 5e KUHP Jo. Pasal 367 (2) KUHP akan tetapi salah satu unsur dari ketentuan pidana dimaksud tidak terpenuhi sehingga perbuatan tersebut bukanlah menjadi tindak pidana.

The decision of Van Recht Vervolging Onslag is a decision that argues that the act that was charged to the defendant is proven, but the act does not constitute a criminal act, then the defendant is dismissed from all lawsuits. In the decision No.126PK/Pid/2012 is a decision related to theft in the household. This decision is interesting because it is very detrimental to the victim so that the case is submitted to the stage of review. The approach method used in this study uses a normative juridical method, the results of the study state that based on the case above from the perspective of criminal law, it is an alleged criminal act of theft of weight in the family environment, so that the requirements must be fulfilled for family relationships between victims of crimes and perpetrators of criminal acts. itself must be proven first. That the actions of the defendants are more qualified in the provisions of Articles 363 (1), 4e, 5e of the Criminal Code Jo. Article 367 (2) of the Criminal Code, but one of the elements of the criminal provisions referred to is not fulfilled so that the act is not a criminal act.

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A. INTRODUCTION

The Constitution of Republic of Indonesia Fourth Amendment to Article 1 paragraph (3) which says "The State of Indonesia is a State of Law". Indonesia is also called a democratic country which is reflected in the 1945 Constitution of the Fourth Amendment Article 1 paragraph (2), that "Sovereignty is in the hands of the people and is carried out according to the Constitution". The consequence that Indonesia is a state of law, the highest power in the state is law.¹ This means that the Republic of Indonesia is a democratic rule of law based on Pancasila and the 1945 Constitution, upholds human rights and guarantees that all citizens are equal before the law and government.

Based on the law, it provides an understanding that the appreciation, practice, and implementation of human rights as well as the rights and obligations of citizens to uphold justice should not be abandoned by every citizen, every state administrator, every state institution, and social institution both at the center and at the center. areas that need to be realized also in and with this criminal procedural law.²

As an embodiment as a legal state, the Court is a judicial body or institution that is the foundation of hope for seeking justice. Therefore, the best way to get a settlement of a case in a state of law is through the judiciary.³ In a judicial body, judges have the most important role because it is the judge who has the right to decide cases. Judges in carrying out their duties, especially in deciding a case, must always adhere to the principles of an independent and impartial judiciary as stated in Article 1 of Law Number 4 of 2004, namely: "Judicial power is the power of an independent state to administer justice to upholding law and justice based on Pancasila, for the sake of the implementation of the State of Law of the Republic of Indonesia."

The embodiment of justice in general can simply be seen in court decisions, where the basis for making decisions is on the judge's consideration before making a criminal decision. Judges' considerations will be judged by the community and accounted for by the judges themselves, therefore the importance of a judge's consideration in giving a decision for the creation of truth, justice, and benefit where all three must get a balanced portion. Through his decision, the judge will determine the severity of the punishment imposed, while on the other hand, through his decision, the judge will also ensure that the law is on a right or an object, the law is also for an act or action.⁴

The process of examining cases in criminal courts, judges in adjudicating a case, especially those who adhere to the view of progressiveness and legal responsiveness, this view is the basis for judges to dare to make a kind of antithesis to the sound and enforceability of the

1 Achmad Irwan Hamzani, *Menggagas Indonesia Sebagai Negara Hukum Yang Membahagiakan Rakyatnya*, *Yustisia*, Edisi 90 September-Desember 2014, page.136-142

2 P.A.F. Lamintang dan Theo Lamintang, *Pembahasan KUHAP Menurut Ilmu Pengetahuan Hukum Pidana & Yurisprudensi*, Sinar Grafika, Jakarta, 2010, page. 8.

3 Oemar Seno Aji, *Hukum Hakim Pidana*, Bumi Aksara, Jakarta, 1984, page.12.

4 Ahmad Kamil dan M. Fauzan, *Kaidah-Kaidah Hukum Yurisprudensi*, Kencana, Jakarta, 2008, page. 34.

rules in the law. Judges are state judicial officials who are authorized by law to adjudicate a case before them. The goal is clear, to realize substantive justice. The meaning of justice and legal certainty arises from differences in interpreting what justice and legal certainty are.

Article 1 number 11 of the Criminal Procedure Code determines that a judge's decision or court decision is a judge's statement stated in an open trial, which can be in the form of punishment or free or free from all legal charges in terms of and according to the procedure regulated by law.⁵

The verdict is free from all legal demands, what is indicted against the defendant is quite legally proven both judged in terms of evidence according to law and in terms of the minimum limit of evidence regulated in article 183 of the Criminal Procedure Code, but the act is not a crime. Strictly speaking, the act that was charged to the defendant has been proven, but it does not fall within the scope of criminal law.⁶

One of the implementations of the acquittal of all lawsuits occurred in Decision Number: 125/PK/Pid/2012, regarding the imposition of a acquittal on the crime of domestic theft by the judge. The decision was handed down because it stated that the convict had been proven to have committed an act as stated in the First Primary indictment, but the act was not a criminal act.

Based on the Decision Number 125/PK/Pid/2012 there was a problem regarding the decision given by the judge in the decision. In the decision there is an act that was forced by the Prosecutor and resulted in the decision being out of sync. The brief chronology of the decision Number 125 is that in the Decision there is a Cassation Decision whose file is split. But the problem that is interesting to study is that in the 2 criminal files the actions are the same but the decisions are different and become out of sync as if there was a game being played by state officials.

The purpose of this paper is to find out and analyze the imposition of acquittal decisions from all lawsuits by judges as well as the object of research which is currently the object of research by the author, namely Decision Number: 125/PK/Pid/2012, regarding the imposition of acquittal decisions on criminal acts. criminal theft in the household by the judge.

B. RESEARCH METHODS

Research is basically a scientific way to obtain data with certain purposes and uses. Scientific method means that research activities are based on scientific characteristics, namely rational, empirical, and systematic. Research is an effort to develop knowledge, as well as develop and test theories.⁷

The research method used in this research is descriptive analysis, namely by describing and analyzing the data obtained in the form of secondary data and supported by primary data regarding various problems

5 Sandro Unas, *Kajian Yuridis Terhadap Bentuk Putusan Hakim Dalam Tindak Pidana Korupsi, Lex Et Societatis* Vol. VII No. 4 Apr 2019, page.58-65

6 Andre G. Mawey *Pertimbangan Hakim dalam Menjatuhkan Putusan Lepas Dari Segala Tuntutan Hukum, Lex Crimen* Vol. V No. 2 Feb 2016, page.82-90

7 Suyitno, *Metode Penelitian Kualitatif: Konsep, Prinsip dan Operasionalnya*, Akademia Pustaka, Tulung Agung, 2018, page.1

related to the legal aspects of applying the law for filing a review by the prosecutor in Indonesian criminal procedure law.⁸ In accordance with the field of legal studies, the approach used in this research is normative juridical, with an emphasis on literature study. As a normative-based juridical research, this research is based on an analysis of legal norms, both law in the sense of law as it is written in the books (in the rule of law) and law in the sense of being decided by judge through the judicial process (court decisions). Thus, the object analyzed is legal norms, both in laws and regulations and those that have been concretely determined by judges in cases decided in court.

C. RESULTS AND DISCUSSION

1. Chronology of Decision Number 126 PK/Pid/2012

That Drs. HERIANTO Aka ACUAN, ADI SUFIANTO Aka PEMPENG, HASAN THOMAS Aka APONG, (hereinafter referred to as the DEFENDANT) and HERLINA Aka AI HUA and DIANA (the defendant in a separate file) on Wednesday, January 27, 2010 at around 15.00 WIB or at least at a time another time in January 2010, at Bank CIMB Niaga Jl. Merdeka No. 05 Pematangsiantar City or at least in another place which is still included in the jurisdiction of the Pematang Siantar District Court, have taken something that totally or partly belongs to another person with the intention of possessing the item against the law. by dismantling, breaking or climbing or using fake keys, false orders or fake clothes carried out by relatives or relatives of that person because of marriage, both straight descendants and deviant descendants in the second degree, namely against the victim witness ROSMAWATI DJINGGA, the act is carried out in the following manner and conditions:⁹

That it started when THO CING WENG who was the husband of the victim witness Rosmawati Djingga died, during which during his life THO CING WENG together with the victim witness ROSMAWATI DJINGGA had assets in the form of money in the form of savings and time deposits as well as gold bars, jewelry and other securities that were kept in the Personal Deposit Box or SDB (Safe Deposit Box) Number 112 at Bank Cimb Niaga. After Tho Cing Weng died, so Drs. HERIANTO aka ACUAN, ADI SUFIANTO aka PEM Peng, HASAN THOMAS aka APONG, Herlina Als Ai Hua and Diana who were children of Tho Cing Weng from his first wife named Tjai Hong who had passed away first, invited the victim witness ROSMAWATI DJINGGA to Bank CIMB Niaga with the reason to retrieve the letter stored in Personal Storage Box (SDB) No. 112 in connection with the need for Tho Cing Weng's funeral. Furthermore, after filling out the guest book and filling out the form provided by the bank, Herlina Aka AI HUA and DIANA and victim witness ROSMAWATI DJINGGA entered the room where the SDB box was stored where to enter the room where the SDB box was

8 Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Rajawali, Jakarta, 1986, page.34-35

9 Verdict 126 PK/Pid/2012 page.2

stored was the owner or heir. and to open the SDB box, one must use the Master Key held by the Bank and the key held by the customer which in this case is in the victim's witness. After the SDB box was opened, the bank officer left the room and left the room for the defendants, HERLINA Aka AI HUA, DIANA and victim witness ROSMAWATY DJINGGA. After taking the necessary documents, the defendants, Herlina Aka AI HUA, DIANA and victim witness ROSMAWATY DJINGGA left the room and relocked the SDB box..¹⁰

Whereas then on January 27, 2010, the Defendant returned to Bank Cimb Niaga without the knowledge of the victim witness ROSMAWATI DJINGGA and intended to take the property of the late THO CING WENG and the victim's witness which was kept in the SDB box as well as the money in the savings account and in the Deposit the name of THO CING WENG, and the DEFENDANT came with a Certificate of Heirs that they had previously prepared explaining as if the only heirs of Tho Cing Weng were Drs. HERIANTO aka ACUANS, ADI SUFIANTO aka PEMPENG, HASAN THOMAS aka APONG, HERLINA aka AI HUA and DIANA. Then they met witness Rusdi as the Service Manager in charge of the Safe Deposit Box (SDB) and asked for the RIMUSRB box rented by THO CING WENG and the savings in the bank were closed on the grounds that this was a request for THO CING WENG's heirs by showing an Expert Certificate The inheritance from the village head who explained that the heirs of THO CING WENG were the DEFENDANT with HERLINA aka AHUA and DIANA and in this case the Defendant Drs. HERIANTO aka ACUAN, HERLINA aka AHUA and DIANA authorized the defendant ADI SUFIANTO and HASAN and the defendant also showed THO's death certificate CING WENG. Family cards and ID cards of each defendant, HERLINA aka AI HUA and DIANA, without including the victim witness, ROSMAWATY DJINGGA. Furthermore, they also submitted the data to witness RUSDI to open the SDB box No. 112, and based on these data also witness RUSDI as the Service Manager immediately agreed to dismantle the SDB box No. 112 without contacting the victim witness which was previously victim witnesses and they and HERLINA aka AI HUA and DIANA have come to the bank and met witness RUSDI and said that they are the heirs of THO CING WENG, besides that, according to bank regulations, if the key to the SDB box is not found or is damaged then required to use the services of the Chub company, but witness RUSDI confirmed the demolition and ordered witness MURSIDI to forcibly dismantle the SDB box using an electric drill and after the SDB box was opened the Bank left the room and only the defendants remained, then the defendants opened the SDB box and empty it . After the SDB box was emptied, then they also asked to close the account in the name of THO CING WENG, both savings and deposit accounts and withdraw all funds in the account amounting to approximately Rp. 500,000,000, - (five hundred million rupiah) without notifying them. victim witness.¹¹

10 *Ibid.*, page.2-3

11 *Ibid.*, page 4

After they took the entire contents of the SDB box and withdrew all the funds from the account in the name of THO CING WENG, they then distributed the money and all the contents of the SDB box without including the victim's witness. As a result of their actions, the victim witness ROSMAWATI DJINGGA suffered a loss of approximately Rp. 3,000,000,000,- (three billion rupiah) or at least more than Rp. 250,- (two hundred and fifty rupiah).¹²

The actions of the heirs of THO CING WENG as described above who took the inheritance of THO CING WENG without the knowledge of ROSMAWATI DJINGGA as the wife of the heir, were finally reported to the police and the results of the investigation to the police by the prosecutor of the PematangSiantar District Attorney compiled an indictment by separating the files. case into 2 (two) indictments, namely in one indictment file on behalf of Drs. HERIANTO aka ACUAN, ADI SUFIANTO aka PEMPENG and HASAN THOMAS aka APONG and in other charges the defendants consisted of HERLINA aka AI HUA and DIANA aka CINCIN.

For the defendants Drs. HERIANTO aka ACUAN, ADI SUFIANTO aka PEMPENG and HASAN THOMAS aka APONG by the public prosecutor described the charges in the case decisions number 324/Pid.B/2010/PN-PMS and 285 K/Pid/2011 alternatively, among others, the first indictment of Article 363 (1), 4e, 5e of the Criminal Code in conjunction with Article 367 paragraph (2) of the Criminal Code and its Subsidiaries Articles 363 (1), 4e, 5e of the Criminal Code. And the second alternative is in the form of Primary Article 372 of the Criminal Code in conjunction with Article 55 (1) of the Criminal Code and its subsidiary Article 372 of the Criminal Code in conjunction with Article 55 (1) of the Criminal Code. As well as the third alternative, Article 266 paragraph (1) of the Criminal Code in conjunction with Article 55 (1) of the 1st Criminal Code.¹³

Based on the separation of cases or splitting carried out by investigators and then submitted to the prosecutor, the defendant on behalf of Drs. HERIANTO Aka REFERENCE, ADI SUFIANTO Aka PEMPENG, HASAN THOMAS Aka APONG felt that they did not get justice for the court's decision, based on this the defendants filed extraordinary legal remedies, namely Review of court decision. Splitsing according to Article 142 of the Criminal Procedure Code regulates the splitting of cases based on 1 (one) case file with several suspects received from investigators, then the Public Prosecutor makes several indictments against each suspect/ defendant.¹⁴

According to Andi Hamzah in his book entitled "Legal Efforts in Criminal Cases" Review of court decision is the right of the convict to request to correct a court decision that has become permanent, as a

12 *Ibid.*,

13 *Ibid.*, page.4-13

14 Ignasius A. Tiolong, Veibe V. Sumilat, Harold Anis, Wewenang Pemecahan Perkara (Splitsing) Oleh Penuntut Umum Menurut Pasal 142 Undang-Undang Nomor 8 Tahun 1981, *Lex Crimen* Vol. VII No. 6 Ags 2018, page.144-151

result of an error or negligence by the judge in making his decision.¹⁵ Furthermore, the provisions for submitting a Review of court decision are regulated in Article 263 (2) of the Criminal Procedure Code, namely:

- a. If there is a new situation (Novum) that gives rise to a strong suspicion, if the situation was known at the time the trial was still ongoing, the result would be an acquittal or an acquittal of all legal claims or the demands of the public prosecutor cannot be accepted or provisions are applied to the case. lighter sentence.
- b. If in various decisions, there are statements that something has been proven, but the things or circumstances as the basis and reasons for the decisions which are stated to have been proven, turn out to be contradicting one another.
- c. If the decision clearly takes into account a judge's mistake or a real mistake.

Novum according to Andi Sofyan is a new thing that arises later after a court decision has obtained permanent legal force under examination at all levels of the court.¹⁶ Meanwhile, according to the opinion of M. Karjadi and R. Soesilo is a new situation or event that has never been found before.¹⁷

If there is a new situation (Novum) which gives rise to a strong suspicion that if the situation had been known at the time the trial was still ongoing, the result would be an acquittal or an acquittal of all lawsuits or the demands of the Public Prosecutor could not be accepted or to the case a criminal provision was applied lighter.¹⁸

In practice, judicial review is often carried out by prosecutors not by the defendant or his heirs, this legal practice is a symptom of judicial error (*rechtelijke dwaling*) which in its implementation is a way that violates or breaks through the rules of the law itself, in this case the rules in criminal procedural law.¹⁹

2. Juridical analysis of the verdict of a criminal case No: 126/PK/Pid/2012 regarding theft in the household

Decision on Release from All Lawsuits (*Unslug van alle Rechtswerving*) The provisions of Article 191 (2) of the Criminal Procedure Code regulate explicitly the decision to release from all lawsuits (*Unslug van alle Rechtswerving*). editorial that: "If the court

15 A. Hamzah dan Irdan Dahlan, *Upaya Hukum Dalam Perkara Pidana*., Jakarta: Bina Aksara, Jakarta, 1987, page.4

16 Andi Sofyan, *Hukum Acara Pidana: Suatu Pengantar*, Rangkang Education, Yogyakarta, 2013, page.3121

17 M. Karjadi dan R. Soesilo, *Kitab Undang-Undang Hukum Acara Pidana dengan Penjelasan Resmi dan Komentar*, Politeia, Bogor, 1990, page.222.

18 Putri Dewi Sri Anugrah Gusti, Novum Dan Putusan Pengadilan Yang Saling Bertentangan Sebagai Landasan Dasar Pengajuan Peninjauan Kembali Terpidana Dalam Tindak Pidana Pemalsuan Akta Otentik (Studi Putusan Mahkamah Agung Nomor 63 PK/Pid/2016), *Jurnal Verstek*, Vol. 7 No. 3 2019, page.116-123

19 Ahmad Fauzi, Analisis Yuridis Terhadap Upaya Hukum Luar Biasa Peninjauan Kembali (PK) Oleh Jaksa Dalam Sistem Hukum Acara Pidana Indonesia, *Jurnal Ilmu Hukum*, Vol 4 No. 2 Februari-Juli 2014, page.138-160

is of the opinion that the act that has been charged against the defendant is proven, but the act does not constitute a criminal act, then the defendant is dismissed from all legal charges."²⁰

In the decision to be released from all lawsuits at the stage of the case review, it is stated that the Panel of Judges sees that the elements committed by the defendant have been fulfilled but the defendant's actions are not criminal acts, as we see in the verdict as follows:

Review of court decision Number: 126 PK/Pid/2012, which in its decision stipulates that the defendants Drs. HERIANTO aka ACUAN, ADI SUFIANTO aka PEMPENG and HASAN THOMAS aka APONG, among others:

- a. Granted the Request for Review of court decision from the Petitioner for Review of court decision/Convicted: ADI SUFIANTO aka PEMPENG;
- b. Canceling the Decision of the Supreme Court of the Republic of Indonesia at the Cassation level Number: 285 K/Pid/2011 dated 26 April 2011 Jo. Decision of the Pematang Siantar District Court Number: 324/Pid.B/2010/PN.PMS., dated 22 September 2010;
- c. To declare that the convict ADI SUFIANTO aka PEMPENG has been proven to have committed the acts as stated in the First Primary indictment, but that such act is not a criminal act;
- d. Release the convict therefore from all lawsuits;
- e. Restoring the rights of the convict in terms of ability, position and dignity and worth;
- f. Determine evidence in the form of:
 - 1) 1 (one) key Number N 97610 Bank Lippo Number 112.
 - 2) 2 (two) books each in the name of THO CING WENG, namely Bank Lippo with number 751-50-00181-6 which is US Dollar savings and Account number 243-01-01549-18-2 which is tabanas in the form of rupiah
 - 3) 1 (one) sheet of Transaction report in the name of THO CING WENG Current Account Number 243-01-00062-006.
 - 4) 1 (one) sheet of Time Deposit Certificate No. BD 1155932 Account Number 751-20-09141-8 in the name of THO CING WENG.
- g. Charges the cost of the case in this level of cassation to the State.²¹

Based on the chronology of the case and the contents of the judicial review decision which was the result of the actions of the heirs of THO CONG WENG, as mentioned above, as the wife of the heir of ROSMAWATY DJINGGA was not included so that she reported this to the police and based on the results of the investigation by the Pematangsiantar Prosecutor's Office, an indictment with separate the indictment file into two, among others, Drs. HERIANTO Aka ACUAN, ADI SUFIANTO Aka PEMPENG and HASAN THOMAS Aka APONG in one

20 Denis Kurniawan Santoso, Analisis Putusan Lepas Dari Segala Tuntutan Hukum Dalam Perkara Penipuan Secara Berlanjut (Studi Putusan Mahkamah Agung No. 1360K/Pid/2016), *Jurnal Verstek* Vol. 8 No. 1 2020, page.80-87

21 Verdict No:126 PK/Pid/2012 page.29

charge and HERLINA Aka AI HUA and DIANA Aka CinCin on another charge, which were subsequently transferred to the Pematang Siantar District Court, where the Public Prosecutor in the indictment against the defendants Drs. HERIANTO aka ACUAN, ADI SUFIANTO aka PEMPENG and HASAN THOMAS aka APONG, with criminal provisions:

- a. First Indictment Primary Article 363 paragraphs 1, 4e, 5e of the Criminal Code Jo. Article 367 paragraph (2) of the Criminal Code,²² where the provisions have elements, among others:
 - 1) Article 363 (1), 4e, 5e of the Criminal Code:
 - a) Imprisonment for a maximum of 7 years.
 - b) Theft by two or more persons;
 - c) Theft committed by two or more persons committed jointly;
 - d) Theft by dismantling, breaking, climbing, False Keys, or False Orders or False Positions.²³
 - 2) Article 367 paragraph 2 of the Criminal Code
 - a) Husband or Wife
 - b) Divorced dining table (separate dining table), bed or property
 - c) Relatives or family of that person because of marriage
 - d) Both straight descendants and deviant families in the second degree
 - So he himself can only be prosecuted if there is a complaint from the person charged with the crime.²⁴
- b. First Indictment Subsidiary Article 363 paragraphs (1), 4e, 5e of the Criminal Code which has the elements as described above.
- c. The second indictment was Primary Article 372 of the Criminal Code Jo. Article 376 of the Criminal Code Jo. Article 55 (1) of the 1st Criminal Code.
 - 1) Article 372 of the Criminal Code:
 - a) Whoever
 - b) An act that is done intentionally against the law to own something
 - c) The property of another person and the item is in his hands not because of a crime
 - d) Sentenced to embezzlement for 4 years.

The elements contained in Article 372 of the Criminal Code consist of objective and subjective elements: The subjective element, namely the element of intent; contains the notion of knowing and wanting. In contrast to the crime of theft which does not include an element of intent or "*Opzettelijk*" as one of the elements of the crime of theft. The formulation of Article 372 of the Criminal Code includes an element of intent in the criminal act of embezzlement, so it is easy for people to say that embezzlement is an *opzettelijk* delict or intentional offense.²⁵

22 *Ibid.*

23 R. Soesilo, *Op. Cit*, page.250-253

24 *Ibid.*, page.255-256

25 Daud Rahim, *Pertanggungjawaban Pidana Penggelapan Dalam Perjanjian Kredit (Studi Kasus*

While the objective elements consist of: First, Whoever; as explained in the crime of theft, the word "whoever" refers to a person. If a person has fulfilled all the elements of the crime of embezzlement then he can be called a perpetrator or "dader". Second, control against the law (intend to own); The Minister of Justice of the Government of the Kingdom of the Netherlands, explained that the purpose of this element is the unilateral control by the holder of an object as if it were the owner, contrary to the rights that made the object belong to him. Third, An object; are objects that by their nature can be moved or in practice are often called "moving objects". Fourth, all or part of it belongs to someone else. Fifth, objects that are in his control are not due to crime; That is, there must be a direct, real relationship between the perpetrator and an object in the crime of embezzlement.²⁶

2) Article 376.

The provisions of Article 376 of the Criminal Code, which are expressly stated: "The provisions of this Article". The point is to apply the provisions of Article 367 of the Criminal Code (regarding theft in the family) into a criminal act of embezzlement, namely a criminal act of embezzlement whose perpetrator or assistant to the crime is still in the family environment.²⁷

In the provisions of Article 376 of the Criminal Code, Tongat in his book entitled "Meteral Criminal Law" states various types of criminal acts of embezzlement in the family as follows:

- a) If a husband commits himself or assists others in embezzling his wife's property or vice versa, while between husband and wife there is no separation of assets and there is also no separate table and bed, then the perpetrator absolutely cannot be prosecuted.
- b) If a husband commits himself or helps another person to embezzle his wife's property or vice versa, while their assets are separated or there is no separate table and bed, and also if the person who commits the embezzlement is a relative or marriage partner, either in a straight line or sideways to the second degree, then prosecution can only be carried out against them if there is a trial from the injured party.²⁸
- e) Article 55 paragraph 1 1st
 - Person
 - Committing a criminal incident
 - Order to commit a criminal incident

Perjanjian Kredit Sepeda Motor, *Jurnal Legalitas*, Vol: 05 No.1 2012, page.6

²⁶ *Ibid.*,

²⁷ AS. Muroswana, *Tindak Pidana Penggelapan*, *Jurnal Universitas Medan Area*, Vol: 5 2016, page.42

²⁸ Tongat, *Hukum Pidana Meteriil*, UMM Press. Malang, 2006, page.57

- Participate in criminal events²⁹

R. Soesilo in his book entitled "The Book of the Criminal Code (KUHP) and its Complete Comments Article by Article" explains that what is meant by "People who participate in committing (*Medepleger*) in Article 55 of the Criminal Code, according to the opinion of R. Soesilo "To do" in the sense of the word "Together do". In the opinion of R. Soesilo there must be two or more people, because there must be someone who did it (*Pleger*) and someone who took part in the act (*Medepleger*) of a criminal event. Here it is requested that the two people all carry out the act of execution, thus committing the elements or elements of the criminal act. It is not permissible, for example, to only carry out preparatory actions or actions that are only helpful in nature, because if so, then the person who helps is not included in "*Medepleger*" but is punished as "helping to do" (*Mediplichtige*) in Article 56 of the Criminal Code.³⁰

- d. Second Indictment Subsidiary Article 372 of the Criminal Code Jo. Article 55 (1) of the 1st Criminal Code, which as the elements of the article have been described above.
- e. Third Indictment Article 266 paragraph (1) of the Criminal Code Jo. Article 55 (1) of the 1st Criminal Code.

- 1) Article 266

- Person/Whoever
- Ordering to place false information into an authentic deed;
- With the intention of using or ordering another person to use the deed as if the statement is in accordance with the truth.
- max 7 years in prison.³¹

The provisions of Article 266 paragraph (1) of the Criminal Code, which is the subject (Perpetrator), namely "who ordered to enter false information", and the word "ordered" is a very important part (*Bestanddeel*) of Article 266 paragraph (1) of the Criminal Code. The maker of the deed in this case is a Notary, he (the Notary) is not the subject (perpetrator) in Article 266 paragraph (1) of the Criminal Code, but the Parties making the authentic deed are the subjects (actors), because they are the ones who ordered to enter false information.³²

- 2) Article 55 paragraph (1) of the 1st Criminal Code has the elements described above.

Based on the elements of the provisions of the article as described above, the author is of the opinion that it is more inclined to the provisions as in the indictment of the Public Prosecutor, namely as in the first Primary indictment, namely

29 R. Soesilo., *Op. Cit.*, page.72

30 *Ibid.*, page.2-76

31 *Ibid.*, hal: 197-198.

32 Themis Simaremare, Tindak Pidana Menyuruh Memasukkan Keterangan Palsu Dalam Akte Otentik (Studi Putusan Nomor: 1545/PID.B/2012 PN. Medan. Jo Putusan Nomor :39/PID/2013/PT.Medan), *USU Law Journal*, Vol.3.No.3 2015, page.98

Article 363 of the Criminal Code Jo. 367 of the Criminal Code which is fulfilled but the acts committed by the defendants are not criminal acts that can be strengthened by the decision of a civil case no. 27/Pdt/G/2010/PN-PMS dated June 11, 2010 which in its decision as quoted by the author as follows "...Stating by law that the Plaintiffs on behalf of HERLINA Aka AI HUA, Drs. HERIANTO aka ACUAN, ADI SUFIANTO aka PEMPENG, DIANA Aka CIN CIN and HASAN THOMAS Aka APONG are the legal heirs and are entitled to the inheritance left by the late. THO CING WENG and the late. TJAI HONG....". So that there is an application of an article that is indicated to be legally enforced.

So that the Public Prosecutor made a legal effort to appeal the file to the Supreme Court with the case register number number 285 K/Pid/2011 and on this legal effort the Supreme Court agreed with the legal efforts made by the Public Prosecutor. In this regard, the defendant, on behalf of Drs. HERIANTO Aka ACUAN, ADI SUFIANTO Aka PEMPENG and HASAN THOMAS Aka APONG disagreed with the Cassation decision, then took extraordinary legal action, namely filing a Review of court decision (PK) based on a novum (new evidence) namely case decision number 249/PDT/2011/ PT-MDN dated September 13, 2011 which in the decision as quoted by the author as follows "...Declare by law that the Plaintiffs on behalf of HERLINA Aka AI HUA, Drs. HERIANTO Aka ACUAN, ADI SUFIANTO Aka PEMPENG, DIANA Aka CIN CIN and HASAN THOMAS Aka APONG are the legal heirs of the late THO CING WENG and the late. TJAI HONG and declares that the Plaintiffs are entitled to the inherited property....." and the decision number 378 K/Pid/2011 dated 28 September 2011 which in the decision as quoted by the author is as follows "Rejecting the cassation request from the Cassation Petitioner: Public Prosecutor at the Pematang Siantar District Attorney's Office....".

Based on the Novum, the Supreme Court through the Panel of Judges Review of court decision number 126 PK/Pid/2012 dated December 16, 2014 which in the decision as quoted by the author is as follows "...Releasing the convict therefore from all charges and so on...".

Therefore, based on a juridical analysis of legal facts, whether in the form of a novum, the crime in question is carried out in a family environment where the complainant or complainant feels himself a victim of the crime in question, namely as the second wife of the heir but because he does not have legality as a wife according to Law Number 1 of 1974 concerning Marriage, the author agrees with the Decision given by the Panel of Judges of the Pematang Siantar District Court and the Judicial Review Decision Number 126 PK/Pid/2012 which acquitted the defendants.

D. CONCLUSION

That based on the above case, seen from the side of criminal law, it is an alleged crime of theft of weight in the family environment, so that the conditions must be fulfilled for the family relationship between the victim of a crime and the perpetrator of the crime itself must be proven first. That the element of family relationship is not fulfilled between the victim's witness who claims to be the wife of the heir and the absence of proof of the marriage certificate issued by the Population and Civil Registry Office means that the victim's witness does not have legal legality as a family. So that the indictment of the public prosecutor by the Pematangsiantar District Court acquitted the defendants. That the actions of the defendants are more qualified in the provisions of Articles 363 (1), 4e, 5e of the Criminal Code Jo. Article 367 (2) of the Criminal Code, but one of the elements of the criminal provisions referred to is not fulfilled so that the act is not a criminal act.

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